

# **EXHIBIT 77**

Microsoft

Pay-as-you-go options.

Microsoft Office 365**COMPUTERWORLD** Print Article  Close Window

## Rimini Street files countersuit against Oracle

Chris Kanaracus

March 29, 2010 ([IDG News Service](#))

Oracle Corp. today was hit with a counterclaim by Rimini Street, the third-party software maintenance provider it sued in January over alleged intellectual property violations.

Oracle's suit is groundless, anticompetitive and disparaging, Rimini Street said in the response filed in U.S. District Court for the District of Nevada.

Rimini Street provides support for SAP and Oracle applications, pledging that customers will save at least 50% off their vendor-provided support bills. While third-party support means customers don't receive product upgrades, Rimini Street caters to companies with stable legacy systems and no immediate desire for updates.

Vendors fiercely covet annual software maintenance revenues, which are charged as a percentage of a customer's license fees and provide steady income even when new business is harder to find.

"Software license updates and product support" [accounted](#) for 51%

of Oracle's total revenue in its most recent quarter, generating \$3.3 billion against just \$281 million in operating expenses, for a profit margin north of 90%.

[Oracle's suit against Rimini Street](#) followed a similar one [it filed in 2007 against SAP](#) and its former subsidiary, TomorrowNow, which also offered third-party support for Oracle applications. TomorrowNow workers illegally downloaded software from Oracle's support systems, according to Oracle. SAP has said the employees were authorized to download the materials on behalf of TomorrowNow customers, but also that some "inappropriate downloads" had occurred.

Rimini Street CEO Seth Ravin was a founder of TomorrowNow. Oracle has alleged Rimini Street amounts to a redux of TomorrowNow's "corrupt" business model.

Rimini Street "typically logs on to Oracle's password protected Technical Support websites using a customer credential, then downloads Software and Support Materials in excess of the customer's authorization under its license agreement," according to Oracle's suit.

The company then uses automatic crawling tools to download Oracle materials "in intentional

violation of Oracle's Technical Support website Terms of Use," the complaint states. "These intrusions have damaged Oracle's support services by causing the databases which host the Software and Support Materials to freeze, disrupting their operation and impeding the availability of lawful downloads to Oracle's other customers."

Rimini Street's answer and counterclaim denies wrongdoing on its part.

"Oracle had full knowledge that Rimini Street's actions were authorized by Oracle's customers," it states. "Far from acting as 'fraudulent thieves,' Rimini Street has acted legally, openly (and often with Oracle's full cooperation)." In addition, Oracle has been unresponsive to invitations to discuss Rimini's business practices or have them independently vetted, the filing alleges.

Rimini Street also takes "extraordinary efforts ... to ensure that Oracle's intellectual property rights are respected," whereas Oracle has conducted a "systematic campaign" against Rimini, including a series of "hostile" letters, the filing states.

"Over the years, Rimini Street responded to each Oracle letter, explained the appropriateness of Rimini Street's practices and procedures, and repeatedly offered to meet and discuss any questions or concerns Oracle might have about Rimini Street's processes and procedures," it states.

Rimini admitted it has used automated downloading tools, but said they were necessary "because Oracle refused to help its customers identify and take delivery of such large volumes of materials."

In June 2007, Oracle changed the terms and conditions on its Web site, disallowing the use of such tools, according to Rimini Street. This action was anticompetitive and in violation of Oracle's customers' contractual rights, the filing states.

"Oracle's efforts escalated in December 2008 when Oracle began interfering with Rimini Street's performance of an authorized download for a large client switching from Oracle to Rimini Street support by blocking Rimini Street access to the Oracle support websites," it adds. Oracle relented after appeals from Rimini and the customer, according to the filing.

As "a good-faith attempt at conflict reduction," Rimini agreed to stop using automated download tools in January 2009, telling Oracle of its decision the following month.

Rimini Street also spoke with Oracle representatives in February 2009 and offered to share internal information with the vendor "and/or to work out an agreement that would utilize an independent third party auditor reporting back to both parties to confirm Rimini Street's compliance with its standard processes and procedures," the filing states.

Oracle did not respond to Rimini Street's proposals, and subsequently filed suit, it adds.

"Oracle has had unlimited opportunities over nearly five years to dialogue and work directly with Rimini Street ... but, as the facts demonstrate, that is not Oracle's objective. Instead, Oracle's goal is to forestall after-market product support competition," the filing states.

Oracle "is committed to customer choice and vigorous competition, but draws the line with any company, big or small, that steals its intellectual property," company spokeswoman Deborah Hellinger said via e-mail. "The massive theft that Rimini and Mr. Ravin engaged in is not healthy competition. We will prove this in court."

Privately held Rimini Street says revenue grew 270 percent year-over-year in 2009, and that it now has nearly 300 clients, 160 employees and \$150 million in "sales backlog." In addition, it claims a 95 percent annual renewal rate.

In an interview, Ravin equated third-party software maintenance to independent oil change shops, saying the same rights consumers have to take their cars to places besides the original dealer apply to his own business.

Oracle's suit has put a slight damper on sales, according to Ravin.

"We continued to close business, including some of the largest deals ever," since the suit was filed, he said. "[But] I think we had a few deals that have not moved forward because of the litigation. We believe that's a good part of the intent of the suit, to slow our business down."

Rimini Street expects to spend "millions and millions of dollars" to pay its legal counsel in the case, he said. The company anticipated the suit and budgeted for the legal fees, which it considers "an investment we are making to finally put this issue to rest."

The case is "critical on so many counts," said Ray Wang, partner with analyst firm Altimeter Group.

"It's imperative that the rules of engagement for third-party maintenance be established," Wang said. "That's the big question in the room. People want it. How can you do it in a way that's respectful to Oracle's intellectual property rights and respectful to the customer's rights? Right now, the rules are just murky."

"If anything (comes) out of all this, hopefully there are some rules of engagement that are created," he added. "Right now customers are looking everywhere to cut costs."

If Rimini Street wins, the market for third-party maintenance will be a more welcome prospect to other providers, he said. But if it loses, Oracle may have "shut out or stopped people from thinking about this."